

A nurse was a patient in the nurses' sick-bay of the hospital where she worked. She contended that her sickness benefit should not be reduced under the National Insurance (Hospital In-Patients) Regulations, 1949, after eight weeks, because she was not receiving free in-patient treatment. Her arguments were that she was not availing herself of the National Health Service, alternatively, that she was not maintained free of charge because the deduction of £100 a year (£1 18s 7d a week) from her salary for board and lodging continued while she was in the sick-bay. The deduction would not have been made had she entered a public ward.

*Held* that she was receiving free in-patient treatment and was thus entitled to benefit only at the reduced rate. She was availing herself of the National Health Service although under privileged conditions. Having regard to the small amount deducted weekly from her wages, she could not be said to have paid "charges" designed to cover the whole cost of the accommodation or services . . ."

1. My decision is that from and including the 25th June, 1951 for every day of free in-patient treatment sickness benefit is payable to the claimant at the reduced rate of 16s. a week.

2. The claimant, who is a student nurse at a hospital, was ill and incapable of work by reason of pleural effusion from the 30th April, 1951 and she was a patient on and from that date in the nurses' sick-bay in the hospital where she works. After eight weeks of treatment her sickness benefit was reduced from 26s. to 16s. a week in purported conformity with Regulation 3(1) of the National Insurance (Hospital In-Patients) Regulations, 1949 [S.I. 1949 No. 1461]. The question in this appeal is whether that reduction was correctly made, and that depends in turn on whether the claimant had received continuously, for a period exceeding eight weeks, "free in-patient treatment"; see the regulations referred to above.

3. "Free in-patient treatment" is defined in Regulation 1 of the said regulations, and means

"medical or other treatment as an in-patient in a hospital or similar institution (being a hospital or similar institution maintained or administered by a local authority . . . or under the National Health Service Act, 1946 . . .) in which, throughout the period of that treatment, that person is or has been maintained free of charge."

In determining whether maintenance is free of charge, regard must be had to Regulation 10 of the said regulations, which says

"A person who, for the purpose of receiving medical treatment as an in-patient, avails himself of the hospital services provided . . . under Part II of the National Health Service Act, 1946, . . . shall only be regarded as not being maintained free of charge for the purposes of these regulations if he is paying or has paid, in respect of his maintenance, charges which are designed to cover the whole cost of the accommodation or services (other than services by way of treatment) provided for that person as part of the said hospital services".

4. It is contended on the claimant's behalf that she cannot be regarded as being "maintained free of charge" for two reasons.

(1) It is said that she is not "a person who, for the purpose of receiving medical treatment as an in-patient, avails herself of the hospital services" provided under the National Health Service Act, 1946, because (so it is contended) while she is maintained in the nurses'

sick-bay, she is not availing herself of hospital services provided under the Act. The sick-bay is a certain ward of the hospital set apart for the use of the nursing staff only. Nurses are admitted to this sick-bay even for trivial ailments which would not merit hospital treatment if they were members of the general public. Conditions in the sick-bay are different from those in the general wards. The food is brought from the nurses' home by the domestic staff of the nurses' home; visitors are allowed at any reasonable hour; all laundering is carried out by the hospital board, whereas patients in general wards are responsible for their own; domestic duties are carried out by the staff of the nurses' home; the nurses' ward in fact is as it were an extension of the nurses' home but happens to be in the main hospital building. Nurses are thus, it is argued, in a different class from persons who, for the purposes of receiving medical treatment, avail themselves of the hospital services. They are not hospital in-patients, but patients in a sick-bay which is an annexe of the nurses' home.

I am unable to accept this contention. The points that differentiate the treatment of a nurse from that of other in-patients merely show that a nurse is a privileged in-patient admitted under more lenient conditions and maintained in more comfortable circumstances than a member of the public in a ward. It appears to me to be indisputable that the claimant has availed herself of hospital services provided under the National Health Service Act, 1946, and that she did so for the purpose of receiving medical treatment as an in-patient. The fact that she was an in-patient who enjoyed special accommodation and certain privileges does not appear to me to affect the matter.

- (2) Alternatively it is argued that, if the claimant is held to be "a person who, for the purpose of receiving medical treatment as an in-patient, avails herself of the hospital services" provided under the said Act, then she has paid, in respect of her maintenance, charges which are designed to cover the whole cost of the accommodation or services (other than services by way of treatment) provided for her as part of the hospital service. The facts are that under her contract of service a deduction of £100 a year is made from the salary of a resident nurse (such as the claimant) for board and lodging. This deduction continues to be made if she is treated in the sick-bay, but if at her own request the nurse is transferred to a general ward, as an ordinary in-patient, the deduction is not made. The deputy finance officer of the hospital told the Local Tribunal that he could not say with certainty whether the deduction covered the whole cost of maintenance in the sick-bay. The costing system does not enable separate costs of the nurses' home or sick-bay to be worked out, but he said that if £100 a year was considered adequate for maintenance in the nurses' home, it should also be adequate for "maintenance" in the sick-bay, by which he presumably meant accommodation or services, other than services by way of treatment. He also said that a private patient would be charged £11 a week, which would include drugs, dressings, etc.

5. The Local Tribunal were struck by the disparity between the £11 payable by a private patient (which under Section 5 of the National Health Service Act, 1946, must be "designed to cover the whole cost of accommodation and services provided for the patient at the hospital, including an

appropriate amount in respect of overhead expenses") and the sum of less than £2 a week payable by a nurse, and came to the conclusion that the whole cost of the accommodation or services provided for the nurse must exceed the amount charged to her. They held that the phrase "charges which are designed to cover the whole cost of the accommodation or services (other than services by way of treatment)" in Regulation 10 of the Hospital In-Patients Regulations is not to be read as meaning any smaller charges made and accepted by a hospital authority in satisfaction of the whole cost of such accommodation or services. They therefore held that, since the claimant did not pay the whole cost of the accommodation and services provided, she must be regarded as being maintained free of charge and was thus entitled to sickness benefit only at the reduced rate after eight weeks.

6. Since he gave evidence before the Local Tribunal the deputy finance officer has kindly supplied, at my request, fuller information and more precise figures than those which were available at the time of the hearing. This fresh evidence may be stated thus:

The charges for private accommodation in the claimant's hospital are calculated in accordance with Regulation 5 of the National Health Service (Pay-Bed Accommodation in Hospitals, etc.) Regulations, 1948 [S.I. 1948 No. 1490]. The charges are an estimated cost arrived at in accordance with Regulation 5(2) of the said regulations, and they are designed to represent the actual cost of maintaining the accommodation and maintaining and treating the patient therein; they contain no element of profit. The average daily cost per in-patient at the claimant's hospital, based on the revised estimates for 1951/52, is £2 18s. 6d. The charges made to private patients are calculated from this figure in accordance with Regulation 5 referred to above, and are—

In a single bed ward	..	..	....	£3	5s.	0d.	a day.
In a double bed ward	..	..	..	£2	19s.	0d.	a day.
In other wards	....	..	..	£2	14s.	0d.	a day.

The difference between the £2 14s. 0d. charged in other wards, and the average daily cost of £2 18s. 6d., is the result of a deduction authorised by Regulation 6 of the said regulations in respect of patients who pay privately for medical treatment.

7. It will be seen that these later figures make the disparity between the sum of less than £2 a week (actually £1 18s. 7d.) paid by a nurse in the sick-bay, and the sum of £18 18s. 0d. a week (£2 14s. 0d. × 7) paid by a private patient in a ward containing more than two beds, even more marked than it was before the Local Tribunal. These later figures give further support to the Tribunal's decision. Regulation 10 of the National Insurance (Hospital In-Patients) Regulations, 1949, quoted above, places upon the claimant the burden of proving that she was paying the specified charges. Having regard to the great difference between the £18 18s. 0d. a week payable by a private patient, which is designed to represent actual cost, and the £1 18s. 7d. a week paid by the claimant, I find it quite impossible to hold that the claimant has proved that she "has paid, in respect of her maintenance, charges which are designed to cover the whole cost of the accommodation or services" provided as part of the hospital service.

8. Although the claimant's appeal is supported by the Insurance Officer now concerned with the case, I feel bound by the relevant provisions to agree with the decision of the Local Tribunal.

9. I dismiss the claimant's appeal.